STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 15, 2008
v	No. 274063 Macomb Circuit Court
DANIEL WALTER WILLIAMS, Defendant-Appellant.	LC No. 2006-002605-FH

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for filing a false or fraudulent financing statement, MCL 440.9501(6). Defendant was sentenced to three years of probation. We affirm.

I Basic Facts and Proceedings

Defendant's conviction arises out of a dispute between defendant and his bank loan officer, Brad Kress. Defendant, in retaliation for the bank's actions regarding a line of credit and subsequent foreclosure of defendant's property, attempted to secure a $10 million lien on Kress' personal and real property pursuant to a UCC financing statement. In an attempt to establish the existence of a security agreement upon which to file a UCC financing statement, defendant had first sent Kress a "notice and demand" demanding the bank restore his account. After no response, defendant purportedly "initiated a lawful action under common law" by sending Kress a "true-bill-private security agreement," which contained over a thousand statements in which Kress purportedly would "freely admit and confess," if not responded to in thirty days. After no response, defendant purportedly convened a so-called jury under the Seventh Amendment that determined Kress owed defendant ten million dollars. Based on the so-called jury verdict, defendant filed the mentioned UCC financing statement.[1]

[1] Kress' employer initially filed an ex parte motion to to terminate the UCC financing statement, which was granted. After a subsequent hearing in which defendant participated, the court removed the UCC financing statement from the record.

II Stay Pending Removal

On appeal, defendant first argues that the lower court proceedings should have been stayed pending the resolution of a notice of removal defendant filed with the United States District Court.

A. Standard of Review

"While the time limitations of 28 USC § 1446(b) are not jurisdictional, they are mandatory and are to be strictly construed when asserted by a party."

B. Analysis

Defendant first claims his notice of removal required the trial court to suspend proceedings. In support, defendant relies heavily on *People v Wynn*, 73 Mich App 713; 253 NW2d 123 (1977). However, "the 1977 amendment to the federal statute allows a state court to conduct a trial while a removal petition is pending, but that a judgment of conviction shall not be entered until a denial of the petition by the federal court." *People v Purofoy*, 116 Mich.App. 471, 323 NW2d 446 (1982). 28 USC 1443 currently states, with regard to state court proceedings: "The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded." 28 USC 1443(c)(3); see *Purofoy*, *supra* at 471. Thus, the statute did not require the trial court to suspend the trial.

Defendant further argues that the judgment of conviction was improperly entered before the case was remanded. The case was remanded, however, on September 1, 2006, and defendant's conviction was entered on September 19, 2006. Defendant's argument lacks merit.

III Effective Assistance of Counsel

Defendant next claims that he was refused his right to counsel because he was not afforded either adequate time to retain his own counsel, or the opportunity to evaluate prospective appointed counsel.

A. Standard of Review

The denial of effective assistance of counsel is a mixed question of fact and constitutional law, which are reviewed, respectively, for clear error and de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

B. Analysis

> To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). A defendant must

> affirmatively demonstrate that counsel's performance was objectively unreasonable and so prejudicial as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). The defendant must also overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2 315 (1991), citing *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). [*People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001).]

At the first date scheduled for preliminary examination, February 24, 2006, defendant indicated he was seeking counsel and the district court re-scheduled the preliminary examination in two weeks to allow defendant to retain counsel or receive court-appointed counsel. The next scheduled preliminary examination hearing occurred on May 5, 2006, and although court-appointed counsel represented defendant, counsel sought to be released from service as defendant "did not wish [counsel] to engage in any type of representation." When defendant was repeatedly asked if he wanted counsel, defendant would reply that he "could not make any statement with the advise [sic] of counsel." At the next scheduled preliminary examination hearing occurred on June 6 and 13, 2006, defendant had new court-appointed counsel. Again, counsel sought to be removed because defendant "does not want me to represent him in this matter." Defendant placed several objections, indicating that he was "in want of counsel." The district court continued the proceedings ordering defendant's counsel to act in an advisory capacity, and defendant was bound over for trial.

On the first day of trial, defendant, with newly appointed counsel, again claimed he was "in want of counsel," and indicated that he did not want to be represented by newly appointed counsel. The trial court declined defendant's requests for new counsel and proceeded with trial. Defendant's third appointed counsel participated in the trial, representing defendant by examining witnesses and advancing arguments for the defendant, notwithstanding defendant's disinterest in his trial and defense.

The right to counsel of choice is not absolute. *People v Akins*, 259 Mich App 545, 557; 675 NW2d 863 (2003). The right to counsel is intended to ensure that defendants receive a fair trial and an effective advocate. *Id*. Moreover, a court must balance the right to counsel with the prompt and efficient administration of justice. *Id*. We review the trial court's decision with respect to defendant's choice of counsel for an abuse of discretion. *People v Echavarria*, 233 Mich App 356, 368; 592 NW2d 737 (1999). A court abuses its discretion when it selects a course outside of the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 372 (2006).

Defendant argues that the trial court abused its discretion when it continued the trial without allowing defendant more time to hire counsel. However, the record reflects that the trial court several times allowed defendant more time to aquire counsel, and after each time defendant would not find counsel but request more time to hire counsel. The court's ruling that the trial continue was not an abuse of discretion. *Maldonado, supra* at 388. The court made every attempt to provide "an effective advocate," to defendant, perhaps even at the expense of "prompt and efficient administration of justice." *Akins, supra* at 557.

Defendant also argues that he should have been afforded an opportunity to evaluate and approve potential court-appointed attorneys. "[N]o defendant is entitled to the appointed

counselor of his choice." *People v Russell*, 471 Mich 182, 192 n 25; 684 NW2d 745 (2004); *People v Bauder*, 269 Mich App 174, 193; 712 NW2d 506 (2005). Substitute counsel will only be appointed where the defendant can show good cause for doing so. *Bauder*, *supra* at 193. Defendant did not make any argument that any of the three attorneys appointed for him were specifically deficient. He merely claimed the right to have his pick of appointed counsel. Defendant's unwillingness to retain his own counsel over the course of eight months make it clear that defendant was interested only in injecting error in the trial court record through his delay and frustration tactics. See *Echavarria*, *supra* at 368. The court's refusal to supply an unending line of appointed counsel for defendant's approval was not an abuse of discretion.

Finally, defendant argues that he was denied the effective assistance of counsel because defense counsel failed to present fruitful arguments at trial. Defendant did not request a *Ginther*[2] hearing or move for a new trial, so review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). We review questions of constitutional law de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

Defendant claims that defense counsel – for whom defendant refused to provide any information – should have argued that defendant did not possess the required mental state to commit this crime. MCL 440.9501(6) provides: "A person shall not knowingly or intentionally file a false or fraudulent financing statement with the office of the secretary of state under subsection (1)(b) or (2)." Defendant argues that evidence of his "judgment" against the loan officer should have been presented in evidence to show that he believed the financing statement to be true when he filed it.

Defense counsel apparently chose not to present evidence of defendant's "default judgment." There is no record of why defense counsel chose this strategy, but that the "judgment" was for $10 million – when defendant claims only to be owed $200,000 – is telling of whether defendant's default judgment and subsequent actions were legally valid. Thus, the record strongly suggests that defense counsel's decision not to introduce evidence of defendant's "default judgment," was strategic. Thus, there is no evidence to rebut the presumption that defense counsel was engaging in sound trial strategy.

Defendant also argued that the underlying loan agreement – which he perceives to demonstrate the loan officer's wrongdoing – should have been introduced as evidence by defense counsel. The agreement may form the basis for defendant's disagreement with the loan officer, but it is not relevant to any potential claim that defendant is owed $10 million. Defense counsel has no responsibility to present meritless arguments. *Mack*, *supra* at 130.

Finally, defendant claims that defense counsel did not have time to adequately prepare a defense, and, alternatively, that his own failure to raise these issues at trial constitutes ineffective assistance of counsel. Setting aside that defendant's own conduct led to the circumstances of his defense, there is no evidence on the record to support either of these contentions, nor does

[2] *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973).

defendant actually present any relevant arguments on appeal. Our review is limited to mistakes apparent on the record, thus these claims also fail. *Rodriguez*, *supra* at 38.

Affirmed.

/s/ Michael J. Talbot
/s/ Brian K. Zahra
/s/ Patrick M. Meter